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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/768,376

01/30/2004

Edward Reiss

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6525

23504

7590

02/15/2008

WEISS & MOY PC

4204 NORTH BROWN AVENUE

SCOTTSDALE, AZ 85251

EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

02/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/768,376	Applicant(s) REISS ET AL.	
	Examiner Michele Kidwell	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,2 and 4-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6-27-07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed June 27, 2007 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because it does not include a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed . It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 – 2 and 4 – 20 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for TCF chlorine free wood pulp, does not reasonably provide enablement for a TCF wood pulp or wood pulp mixture. The

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specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

The claims have been amended to recite a wood pulp that is TCF wood pulp and the applicant's amendments suggest that such a wood pulp lends itself to being a totally chlorine free product. While it is unclear what the "TCF" in TCF wood pulp incorporates, the examiner notes that paragraph 0031 of the instant specification contains the sole occurrence of the term "TCF". Further, in this case, the instant specification states that by using both a spunbond hydrophilic non-woven material and a TCF chlorine free woodpulp, the article is produced as 100% chlorine free. In this case, it is noted that TCF wood pulp or wood pulp mixture may not be the same as TCF chlorine free woodpulp and that the use of TCF chlorine free woodpulp in itself may not be enough to render the product 100% chlorine free as the specification requires both as previously explained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 2 and 4 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiss et al. (US 5,743,895) and further in view of Cook et al. (US 5,562,740).

With respect to claim 1, Reiss et al. (hereinafter “Reiss”) discloses a disposable diaper comprising an exterior layer comprising a non-woven material having a planar, soft, cloth-like surface layer, a core layer comprising a wood pulp, a containment layer coupled to a first side and a second side of the core layer, a distribution layer coupled to the containment layer and an interior layer coupled to the distribution layer comprising a non-woven liquid permeable layer as set forth in col. 2, line 55 to col. 3, line 4.

The difference between Reiss and claim 1 is the provision that the core layer, the containment layer and the distribution layer is made of a non-chlorine bleached material.

Cook et al. (hereinafter “Cook”) teaches a non-chlorinated bleached TCF wood pulp as set forth in the abstract and in col. 5, line 63 to col. 6, line 3.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a non-chlorinated bleached wood pulp because it is well known in the art that wood pulp may be bleached in order to achieve brightness and increase consumer appeal as taught by Cook in col. 5, lines 62 – 63.

Likewise, it is well known in the art that the use of elemental chlorine as a bleaching agent has decreased because it is difficult to handle and potentially hazardous to both the mill personnel and equipment. Additionally, the use of chlorine as a bleaching agent has decreased due to the concern expressed by the United States

Environmental Protection Agency that the element might be toxic to humans and animals.

As to claims 2, Reiss discloses a diaper further comprising a leakage protection layer coupled to the exterior layer for preventing waste material from leaking out of the disposable diaper as set forth in figure 3.

Regarding claims 4, 10 and 16, Reiss discloses a disposable diaper having a multi-layered diaper assembly wherein the core layer further comprises a superabsorbent mixture as set forth in col. 4, lines 29 – 41.

With respect to claims 5 – 6, 8, 11 – 12, 14, 17 – 18 and 20, the examiner contends that it would have been obvious to one of ordinary skill in the art to modify the exterior layer to provide the claimed materials because the use of such materials is well known in the art.

As to claims 7, 13 and 18, see the rejection of claim 1.

With reference to claims 9 and 15, see the rejection of claim 1.

Response to Arguments

Applicant's arguments filed December 6, 2007 have been fully considered but they are not persuasive.

The applicant argues that Cook states that completely bleached, partially bleached and unbleached fibers are applicable. The examiner contends that If one of ordinary skill in the art is able to “at once envisage” the specific embodiment within the generic teaching, the embodiment is anticipated. See MPEP 2131.02.

The examiner contends that Cook utilizes fibers bleached with hydrogen peroxide. All fibers utilized by Cook are suitable for use in any and all layers of the absorbent article including the containment layer and the distribution layer.

Cook discloses the use of absorbent articles in col. 1, lines 27 – 31.

The applicant further argues that Cook undergoes an additional process that would result in trace amounts of chlorine, but as noted by applicant, col. 14, lines 27 - 34 state that multi-stage bleaching and washing have been found to provide desirable results, but lines 24 – 27 of col. 14, state that the process utilized by Cook avoids the capital expense and processing inconvenience of additional bleaching and washing. Further, the fact that Cook acknowledges a potential benefit from conventional multi-stage washing and bleaching does not indicate that the product of the invention has been subject to such a process.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele Kidwell/
Primary Examiner, Art Unit 3761